

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 19264 of 2003(R)

PETITIONERS:

- 1. T.K.SOMARAJAN AGED 35 YEARS,
S/O.KARUTHA KUNJU, THADATHIL, MANAKKAYAM,
CHITTUR P.O., RANNI TALUK, DIST.PATHANAMTHITTA.**
- 2. A.S.BIJU AGED 23 YEARS,
S/O SOMAN, AYATHIL, MANAKKAYAM,
CHITTOOR P.O., RANNI TALUK,
DIST.PATHANAMTHITTA.**

**BY ADV. SRI.K.REGHU KOTTAPPURAM
SRI.GINESH.P.**

RESPONDENTS:

- 1. THE SUB INSPECTOR OF POLICE,
PERUNAD, RANNI (VIA), DIST.PATHANAMTHITTA.**
- 2. THE CIRCLE INSPECTOR OF POLICE,
VADASSERIKKARA, DIST.PATHANAMTHITTA.**
- 3. THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA DISTRICT, PATHANAMTHITTA.**

**BY PUBLIC PROSECUTOR
GOVERNMENT PLEADER SMT.SMITHA SUKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.19264 of 2003-R

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Dated this the 6th day of September, 2007.

JUDGMENT

1. Petitioners are two of the accused persons arrayed in Ext.P3 first information report registered stating commission of offences punishable under the different provisions of the Kerala Abkari Act. They challenge the said FIR on the ground that they have been falsely implicated and the detecting officer is himself conducting the investigation. They also placed before this Court Ext.P5, a representation made by them to the Superintendent of Police seeking remedial action for their grievances. At the stage of admission, by detailed order dated 4th July, 2003, this Court noticed the entire case of the petitioners and held that the request made by the

petitioners under Section 36 of the Code of Criminal Procedure could be considered by the Superintendent of Police. It was specifically noted by this Court that the petitioners are not able to make any specific allegations of malafides against the detecting police official – the Sub Inspector of Police. This Court also wondered as to how their names appeared in the FIR, if it were their case that they were not present at the scene of crime. It was observed that the petitioners are not able to explain that situation. Accordingly, the matter was adjourned for the learned Public Prosecutor to obtain instructions as to what action has been taken on Ext.P5. This Court had also observed that in the fitness of the things, it would appear that the investigation ought to be conducted by a police officer other than the detecting officer.

2.The lengthy rope of lethargy and administrative inefficiency, as usual, further dragged the instructions

away from reaching the table of the Public Prosecutor or the Government Pleader. Quite surprised to notice that in spite of repeated postings, no instructions were made available to the learned Government Pleader, I issued an order on 6-8-2007 requiring an affidavit of the Superintendent of Police, Pathanamthitta or his personal appearance to explain the delay in placing instructions. Following that, a counter affidavit has been placed on record by the third respondent Superintendent of Police, sworn to on 8-8-2007 along with C.M.Application 4774/2007 disclosing no reason, whatsoever, sustainable in law or on facts, for the inordinate delay in filing the counter affidavit or in placing materials that would have avoided the situation in which this case has now reached. Be that as it may, since the matter has to be finally disposed of without, in any manner, affecting the course of justice, the counter affidavit of the third respondent is taken on record.

3. The third respondent's counter affidavit does not contain any information as to what action has been taken on Ext.P5 representation made by the petitioners. Section 36 of the Code of Criminal Procedure enjoins that police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. So much so, the Superintendent of Police could have either taken over the investigation or could have had the investigation conducted through another officer who is superior to the detecting officer. This Court with its authority under Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure, had stated in the order dated 4th July, 2003 that in the fitness of things it would appear that investigation ought to be conducted by a police officer other than the detecting officer.

4. Whether the Code of Criminal Procedure contains provision authorizing further investigation and still further, whether the investigation by the detecting officer himself would result in failure of justice or would, in any manner, prejudice the defence of the accused, are not matters to be gone into now. The aforesaid observation made by this Court in the order dated 4th July, 2003 was a clear indicator to the Superintendent of Police of the views of this superior Court and the police officers were duty bound to ensure its obedience.

5. Though it is not shown that any action followed at the hands of the Superintendent of Police, it appears that the Goddess of Justice had taken over the mantle and cured the situation with the passage of time. Ext.P4 mahazar shows that Sri.Mohandas, Sub Inspector of Police was the detecting officer. In paragraph 2 of the counter affidavit it is stated that there was no other Sub Inspector attached to the Perunad Police Station and it

was accordingly that Sri.Mohandas himself took up the investigation. Going by the statements in paragraph 2 of that counter affidavit, it can be seen that Mohandas continued with the investigation on 28-5-2003 and 10-6-2003 and on 10-6-2003, the sample of arrack was sent to FSL for chemical analysis report. I may at once notice that the interim order was issued by this Court only after the case had reached that stage. The interim order dated 4th July 2003 was, obviously, not intended to change the course of investigation or to undo anything that would have already been done. On 8-6-2004 and 12-6-2004, the Sub Inspector Sri.Sarju Prasad conducted the enquiry about the remaining accused persons and it was Sub Inspector Sri.Sarju Prasad who filed the charge sheet before the JFMC, Ranni that led to the committal to the Court of Session where it is now pending trial.

6.From the facts noticed above, it can be seen that the investigation after the issuance of the order dated 4-7-

2003 by this Court was not carried on by the detecting officer. Therefore, the petitioners cannot contend that there was any violation of the order dated 4th July, 2003 issued by this Court.

7. The learned counsel for the petitioners argued that no action having been taken on Ext.P5 and because, the investigation was carried on without taking such decision, the entire proceedings have to be scrapped and the trial cannot be held. This contention cannot stand, for two reasons. Firstly, as already noticed, there is no violation of any of the directions issued by this Court in its order dated 4th July, 2003. Secondly, apart from the fact that it is not an indefeasible principle, but only advisable, that the investigating officer and the detecting officer are not the same, any irregularity, illegality or impropriety or failure of procedure during investigation is a matter that could gain attention of the trial Judge and in certain situations they could also be

urged by the accused in defence. It is not for this Court to pre-judge whether the manner in which investigation has been conducted has resulted in the impairment of any valuable rights of the accused and whether such procedural failure, if any, has to ultimately stand to be in favour of the accused persons.

For the aforesaid reasons, I find no ground to quash Ext.P3 FIR or to issue any further directions, though it would be open to the petitioners to place the order dated 4th July, 2003 also before the Court of Session. Subject to the above, this writ petition is dismissed.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

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THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 6th September, 2007.